



MONTGOMERY COUNTY ETHICS COMMISSION

Waiver No. 03-030

A public employee must not represent a person in a particular matter if the County is a party to that matter and the person has a position adverse to the County. David Freishtat, a member of a commission who is an attorney, seeks a waiver of this prohibition to allow him to represent clients in cases where the County is the opposing party. We will grant the requested waiver, limited to representation of clients in land use issues before the County Board of Appeals, condemnation cases where the County is the condemner, and any appeals arising from those matters. This waiver does not encompass any other matters (including representation of any company that could be within the jurisdiction of the employee's commission).

The employee's representation of clients in cases where the County is the opposing party would violate § 19A-14(g). In that regard, we adopt and incorporate the County Attorney's October 10, 2003, opinion, which is attached.¹

The criteria for a waiver of the prohibitions in § 19A-14(g) are found in § 19A-8(a). The Commission may grant a waiver if it finds that (1) the best interest of the County would be served by granting the waiver; (2) the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and (3) granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.

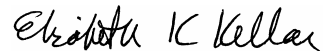
We believe the employee meets the waiver test. With regard to the first factor (best interest of the County), the employee states that "[i]t is in the best interest of the County to have a member of the business community serve on the Commission, and to remove me from the Commission for the conflict of interest would not serve the County." With regard to the second factor (conflict of interest), the employee notes that his representation of clients in cases adverse to the County would not conflict with his duties as a member of a County commission. These cases would primarily involve land use issues—administrative appeals from the County Board of Appeals and condemnation cases. In contrast, the employee's work on the County commission does not involve these matters. The employee states that he "will not represent any company that could be within the jurisdiction of the [quasi-judicial commission he sits on] as long as I am a member of that Commission." With regard to the third factor (economic advantage), the employee states that "[g]ranteeing the waiver will not grant me any economic advantage over an other public employee or the general public."

We grant the requested waiver of § 19A-14(g), limited to representation of clients in land use issues before the County Board of Appeals, condemnation cases where the County is the

¹ The employee earlier sought an opinion from the County Attorney as to whether his representation of clients would violate the ethics law.

condemner, and any appeals arising from those matters. This waiver does not encompass any other matters (including representation of any company that could be within the jurisdiction of the employee's commission).

FOR THE COMMISSION:

A handwritten signature in cursive script, appearing to read "Elizabeth K. Kellar".

February 26, 2004

Date

Elizabeth K. Kellar, Chair